

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EASTMAN CHEMICAL COMPANY,	:	
	:	
Plaintiff,	:	Case No. 11-cv-2589 (KPF)(HBP)
	:	
- against -	:	
	:	
NESTLÉ WATERS MANAGEMENT &	:	
TECHNOLOGY,	:	
	:	
Defendant.	:	
	:	
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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO AMEND ANSWER AND COUNTERCLAIMS**

SULLIVAN & WORCESTER LLP

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*Attorneys for Defendant
Nestlé Waters Management & Technology*

Defendant Nestlé Waters Management and Technology (“Nestlé”), by and through its attorneys, Sullivan & Worcester LLP, respectfully submits this Memorandum of Law in Support of its Motion For Leave to Amend its Answer and Counterclaims (the “Motion”), pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. Nestlé’s proposed Amended Answer and Counterclaims is attached as Exhibit B to the Declaration of Nita Kumaraswami, dated November 26, 2013 (the “Kumaraswami Declaration”).¹

Argument

It is well-settled that leave to amend a pleading should be “freely granted when justice so requires.” Fed.R.Civ.P. 15(a); *Rachman Bag Co. v. Liberty Mut. Ins. Co.*, 46 F.3d 230, 234-35 (2d Cir. 1995).² Leave to amend a pleading may only be denied if the proposed amendment “(1) has been delayed unduly, (2) is sought for dilatory purposes or is made in bad faith, (3) the opposing party would be prejudiced, or (4) would be futile.” *A.I.A. Holdings, S.A. v. Lehman Bros., Inc.*, No. 97 Civ. 4978 (LMM)(HBP), 2001 WL 1631412, at *2 (S.D.N.Y. Dec. 18, 2001) (citation omitted). None of those reasons is present here.

First, there has been no undue delay; the proposed third counterclaim and related amendments relate to additional facts revealed during and in connection with fact and expert discovery. *See State Teachers Retirement Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d Cir. 1981) (finding abuse of discretion in denying leave to amend). Second, the proposed amendments are for the purpose of conforming Nestlé’s pleading to such facts. Third, there would be no prejudice to plaintiff. The proposed amendments relate closely to Nestlé’s original counterclaims, and Nestlé’s expert, who discussed in his expert report the issue of damages

¹ Nestlé’s previously filed Answer and Counterclaims is attached as Exhibit A to the Kumaraswami Declaration, and a comparison of the two pleadings is attached thereto as Exhibit C.

² Rule 15 also allows pleadings to be amended with the written consent of the opposing party. Plaintiff has not granted such consent in this matter.

related to the proposed counterclaim, has not yet been deposed. In addition, no trial date has been set, and no motions for summary judgment have been filed. Finally, because the proposed counterclaim states a valid claim and the related amendments are based on evidence revealed during discovery, they would not be futile.

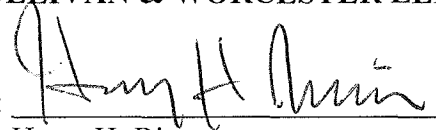
Conclusion

For the reasons set forth above, Nestlé respectfully requests that its motion for leave to file the Amended Answer and Counterclaims be granted.

Dated: New York, New York
November 26, 2013

SULLIVAN & WORCESTER LLP

By: _____



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